IN THE HON'BLE HIGH COURT OF JUDICATURE AT BILASPUR

W.P.NO. 283/ OF 2001
PETITION UNDER ARTICLE 227 OF CONSTITUTION OF INDIA

PETITIONER .. Noharlal Verma, S/o Nathuram Verma, aged about 48 years Lamps Manager, Now working in Lamps Lohandigora, Tahsil & District - Jagdalpur.

VERSUS

RESPONDENTS 1. District Co-operative Central Bank Limited, Jagdalpur Through The Manager, District - Bastar, Now District Jagdalpur.

2. Deputy Registrar, Co-operative Societies, Kanker, District - Kanker.

3. Joint Registrar, Co.operative Societies, Raipur, District - Raipur (Chhattisgarh).

4. Joint Registrar, Co-operative Societies, Jagdalpur District - Jagdalpur (Chhattisgarh).

5. Board of Revenue, Gwalior (MP)

6. M.P. State Co-Operative Tribunal Bhopal through its Chairman, Bhopal, Madhya Pradesh.

DETAILS OF PETITION :

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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

(Division Bench)

CORAM : Hon'ble Shri A.K. Patnaik, CJ
& Hon'ble Shri V.K. Shrivastava, J.

WRIT PETITION NO. 283 OF 2001

Noharlal Verma

Versus

District Cooperative Central Bank Limited, Jagdalpur & others

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Present: Mr. H.B. Agrawal, Sr. Advocate with Ms. Sangeeta Mishra, counsel for the petitioner.

Mr. Prafull Bharat, counsel for respondent No.1

ORDER

(Passed on 4th May 2005)

The following Order of the Court was passed by **A.K. Patnaik, CJ:**

The petitioner was working as a Manager in the LAMPS. A disciplinary proceeding was initiated against the petitioner for charges of embezzlement and financial irregularities. In the inquiry, the charges were proved and by order dated 29.04.1982, the Manager District Cooperative Central Bank Ltd., removed the petitioner from service. On 30.06.1982, the petitioner filed an application under Section 55(2) of the Madhya Pradesh Cooperative Societies Act, 1960 (for short "*the Act*") before Joint Registrar, Cooperative Societies, Raipur against the said order of removal. On 08.10.1985 the petitioner filed another application under Section 55(2) of the Act before the Joint Registrar, Cooperative Societies, Jagdalpur against the said order of removal. The Joint Registrar, Cooperative Societies, Jagdalpur District dismissed the application filed by the petitioner on 08.10.1985 as barred by time by order dated 19.02.1986. Aggrieved, the petitioner preferred an appeal against the said order dated 19.02.1986 passed by the Joint Registrar, Cooperative Societies,

Jagdalpur District before the Revenue Board, Gwalior which was numbered as Appeal No.80-1/87 but by order dated 14.06.1990, the Revenue Board, Gwalior, dismissed the appeal of the petitioner and confirmed the order passed by the Joint Registrar, Cooperative Societies, Jagdalpur District.

2. Thereafter, the application filed by the petitioner before the Joint Registrar, Cooperative Societies, Raipur District on 30.06.1982 was sent to the Joint Registrar, Cooperative Societies, Jagdalpur District for adjudication by letter dated 22.10.1990 and the Joint Registrar, Cooperative Societies, Jagdalpur District in turn sent the said application of the petitioner to the Deputy Registrar, Kanker for adjudication and the Deputy Registrar, Kanker registered the said application of the petitioner as Case No.5/92 and finally decided the application in favour of the petitioner setting aside the order of removal by order dated 18.05.1994. Pursuant to the said order dated 18.05.1994 of the Deputy Registrar, Cooperative Societies, Kanker, the petitioner was reinstated in service. The District Cooperative Central Bank Ltd., Jagdalpur then filed an appeal against the said order dated 18.05.1994 passed by the Deputy Registrar, Cooperative Societies, Kanker before the Joint Registrar, Cooperative Societies, Raipur, but the said appeal was dismissed on 07.08.1998. Aggrieved by the said order dated 07.08.1998, the District Cooperative Central Bank Ltd., Jagdalpur filed a second appeal before the Madhya Pradesh State Cooperative Tribunal, Bhopal which was numbered as Second Appeal No.560 of 1999 and by judgment dated 22.01.2001 the said Tribunal allowed the appeal and set aside the order passed by the Deputy Registrar, Cooperative Societies, Kanker on 18.05.1994 as well as the order passed by the Joint Registrar, Cooperative Societies, Raipur on 07.08.1998. Aggrieved by the said judgment dated 22.01.2001 of the Madhya Pradesh State Cooperative Tribunal, Bhopal in Second Appeal No.560 of 1999 the petitioner has filed this writ petition under Article 226 of the Constitution of India.

3. On 07.03.2001, this Court while issuing notices to the respondents stayed the impugned judgment dated 22.01.2001 passed by the Madhya Pradesh State Cooperative Tribunal, Bhopal. The result is that the

petitioner continued to serve as a Manager in the LAMPS under the District Cooperative Central Bank Ltd., Jagdalpur. The District Cooperative Central Bank Ltd., Jagdalpur, however, has filed an application [M.(W).P.No.760 of 2004] for vacating the said interim order of stay. On 16.02.2005 the Court called for the records of the Tribunal and the Courts and the said records have been received by the Registry in the meanwhile.

4. At the hearing Mr. H.B. Agrawal, Sr. Advocate, appearing for the petitioner submitted that a reading of the impugned judgment of the Tribunal would show that the Tribunal has taken a view that after the Revenue Board, Gwalior passed the order dated 14.06.1990 dismissing the appeal No.80-1/87 of the petitioner and confirming the order passed by the Joint Registrar, Cooperative Societies, Jagdalpur dated 19.02.1986 by which the Joint Registrar, Cooperative Societies, Jagdalpur had dismissed the application of the petitioner dated 08.10.1985 against the order of removal, the second application of the petitioner against the order of removal was barred by *res judicata* as provided in Section 11 of the Code of Civil Procedure, 1908. Mr. Agrawal vehemently submitted that this was totally an erroneous view as Section 11 of the Code of Civil Procedure did not apply to an application filed by the petitioner under Section 55 of the Act against an order of removal. He further submitted that the application of the petitioner dated 08.10.1985 against the order of removal was dismissed by the Joint Registrar, Cooperative Societies, Jagdalpur District by order dated 19.02.1986 on the ground that it was barred by time. Hence, the application of the petitioner was not considered on merits. He further submitted that the other application of the petitioner dated 30.06.1982 was entertained and registered by the Deputy Registrar, Kanker with the consent of the District Cooperative Central Bank Ltd., Jagdalpur and therefore, the limitation as provided in Section 55(2) of the Act did not apply. Mr. Agrawal cited the decision of the Supreme Court in **S.M. Nilajkar and others vs. Telecom District Manager, Karnataka** reported in **2003(2) MPLJ 529** wherein it has been held that there is no limitation prescribed for reference of a dispute to an Industrial Tribunal.

5. Mr. Prafull Bharat, learned counsel appearing for respondent No.1, on the other hand, submitted that it would be clear from the provisions of Section 55(2) of the Act that the Registrar shall not entertain any dispute unless presented to him within 30 days from the date of order sought to be impugned and in this case both the applications filed by the petitioner against the order of removal dated 29.04.1982 were filed before the Registrar after the expiry of 30 days from the date of order of removal. He further submitted that the Madhya Pradesh State Cooperative Tribunal, Bhopal was right in taking a view that the second challenge to the very same order of removal could not have been entertained after the first challenge was decided against the petitioner by the Revenue Board, Gwalior in view of the principles of *res judicata* as contained in Section 11 of the Code of Civil Procedure, 1908. He also cited a decision of the Supreme Court in **Ragho Singh vs Mohan Singh and Others** reported in **(2001) 9 SCC 717** wherein it has been held that when the appeal is filed beyond the time it has to be dismissed in the absence of an application under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the appeal.

6. Section 55(2) of the Act along with the two provisos thereto are quoted herein below:

> **"55. Registrar's power to determine conditions of employment in societies.**-(1) xxx xxx xxx xxx
>
> (2) Where a dispute, including a dispute regarding terms of employment working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees:
>
> Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of order sought to be impugned:
>
> Provided further that in computing the period of limitation under the foregoing proviso, the time requisite for obtaining copy of the order shall be excluded."

It would be clear from the aforesaid provision that a dispute including a dispute regarding disciplinary action taken by a society between a society

and its employees can be decided by the Registrar or any officer appointed by him not below the rank of Assistant Registrar but the first proviso to sub-Section (2) of Section 55 of the Act quoted above makes it clear that the Registrar or such officer "shall not entertain the dispute unless presented to him within 30 days from the date of order sought to be impugned". In the present case the order of removal was passed on 29.04.1982 and the petitioner filed an application on 30.06.1982 against the said order of removal before the Joint Registrar, Cooperative Societies, Raipur. The case of the petitioner is not that he was entitled to time up to 30.06.1982 under the second proviso to sub-section (2) of Section 55 of the Act for obtaining the certified copy of the order of removal. This application was thus beyond the period of 30 days and the Registrar or the Officer to whom the application was referred to could not have entertained the dispute in view of the clear bar contained in the first proviso to sub-Section (2) of Section 55 of the Act. Hence, assuming that the provisions of Section 11 of the Code of Civil Procedure in relation to the *res judicata* were not applicable and the adjudication of the appeal No.80-1/87 by the Revenue Board, Gwalior and the other application of the petitioner filed on 11.10.1985 against the very same order of removal before the Joint Registrar, Cooperative Societies, Jagdalpur did not constitute a bar for a fresh adjudication, the application of the petitioner filed on 30.06.1982 against the order of removal dated 29.04.1982 was also barred by time under the proviso to sub-Section (2) of Section 55 of the Act.

7. The decision of the Supreme Court in **S.M. Nilajkar and others vs. Telecom District Manager, Karnataka** (supra) that there was no limitation provided for reference of a dispute to an Industrial Tribunal applied to a case of a reference under the Industrial Disputes Act and did not apply to a dispute raised before the Registrar or referred to an officer under sub-Section (2) of Section 55 of the Act. This will be clear from para 17 of the said judgment in the case of **S.M. Nilajkar and others vs. Telecom District Manager, Karnataka** (supra) quoted herein below:

> "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We

cannot agree. It is true, as held in *Shalimar Works Ltd. vs. Workmen,* (supra) that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even re-employment of most of the old workmen was held to be fatal in *Shalimar Works Ltd. vs. Workmen* (supra). In *Nedungadi Bank Ltd. vs. K.P. Madhavankutty* (supra) a delay of 7 years was held to be fatal and disentitled the workmen to any relief. In *Ratan Chandra Sammanta vs. Union of India* (supra) it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do not think that the delay in the case at hand has been so culpable as to disentitle the appellants to any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in *Daily Rated Casual Labour vs. Union of India* (supra) the Department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16.1.1990 they were refused to be accommodated in the Scheme. On 28.12.1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal-cum-Labour Court. We do not think that the appellants deserve to be non-suited on the ground of delay."

8. Regarding the submission of Mr. Agrawal that the dispute raised by the petitioner against the order of removal has not been decided on merits, we are of the view that once the petitioner chose to raise a dispute with regard to the order of removal under sub-Section (2) of Section 55 of the Act, the said dispute could be entertained and decided only in accordance with the provisions of the said sub-Section (2) of Section 55 of the Act and if the first proviso to sub-Section (2) of Section 55 of the Act provides that such a dispute could be entertained by the Registrar or other Officer to whom it is referred only if it is presented within 30 days from the date of order sought to be impugned, the Registrar or such Officer had no

jurisdiction whatsoever to entertain and decide the dispute if the same was presented beyond 30 days from the date of impugned order.

9. For the aforesaid reasons we dismiss this writ petition and vacate the interim order dated 07.03.2001.

Sd/-
Chief Justice

Sd//-
V.K.Shrivastava
Judge